GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT.

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Indian Coffee Bar, Bus Stand Circle, Yeshwantpur Bangalore-22.

Award of the Labour Court, Bangalore—Published.

Read the following papers :

(1) Letter No. 697/72-73, dated 5th September 1972 from Sri P. Srinivasacharya, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 5th day of September 1972.

Present :

Sri P. Srinivasacharya, B.A., LL.B. ... *Presiding Officer.*

Reference No. 9 of 1971.

I Party: Workmen represented by the Secretary, Bangalore District General Workers' Association, 70 Arcot Srinivasachar Street, Bangalore-2.

Vs.

II Party: The Management of Indian Coffee Bar, Bus Stand Circle, Yeshwantpur, Bangalore-22

Reference :—Government Order No. FCL 709 LLD 70, dated 3rd February 1971

AWARD

1. The Government of Mysore in their Order No. FCL 709 LLD 70, dated 3rd February 1971 have referred an Industrial Dispute existing between the above named parties to this court for adjudication on the points of dispute noted below :

> "Are the Management of Indian Coffee Bar, Bus Stand Circle, Yeshwanthapur, Bangalore-22, justified in terminating the services of Sri Renuka with effect from 22nd February 1970. If not, to what relief is the said workman entitled ?"

2. On behalf of the first party workman, claim statement is filed alleging that the workman was employed as server in the second party coffee bar. He was required to bring water from a distance to the hotel whenever there was no rush of customers in the coffee bar generally during mornings and evenings. He joined service on 27th December 1968. He was paid a monthly salary of Rs. 32.50 up to October 1969 and Rs. 35 from November 1969. On 22nd February 1970, the Management asked him to sign a voucher for higher amount than what was being paid to him with a view to evade provisions of the Minimum Wages Act. The workman refused to affix his signature and therefore the Mangement asked him to get out and that he should not come for work. The workman protested and demanded his reinstatement. He asked the Management to give him a notice of termination stating the reason for his termination which the Management refused to give. Then he approached the Secretary of the Union and the said Secretary addressed a letter to the Labour and Conciliation Officer who initiated conciliation proceedings. In the written statement filed by the Management before the Conciliation Officer, the second party admitted that he told the workman that his services were not required. The allegations made by the Management in the said written statement are denied. During the course of conciliation, the management agreed to take back the employee and also pay him some amounts due to him towards the difference of minimum wages. But the management was not agreeable to fix up a date for reinstating the worker. It was said that the date would be intimated later. As the workman did not know the definite date on which he had to resume work he could not do so when the Management asked him to report to duty. The Management refused to take him back to work on the plea that they had appointed another person as he

had not reported for duty within the time given. Even the difference in minimum wages were not paid. Therefore it is prayed that an award may be passed directing his reinstatement with back wages and continuity of service.

3. The second party in its objection statement has stated that the first party was working as a cooly in a lorry and on 28th December 1968 the owner of the lorry approached the second party and requested him to give the workman some work. The second party's hotel does not have the facility of tap. The second party took pity on him and asked him to draw, carry and supply water from a nearby well whenever required and he was paid a sum of Rs. 30 till April 1969 when it was raised to Rs. 32 from May 1969 and to Rs. 35 from December 1969. He was also permitted to take free food and refreshments. He was also drawing and supplying water to the neighbouring residents in the area and was receiving money from them. The first party is therefore not a workman under the I. D. Act. The first party was not a server. He was not regular every day in his supplies and used to stay away putting the management to inconvenience. He was asked to be more regular but he used to abuse the other employees in foul and filthy languages. On 21st February 1970 after break-fast he took Rs. 2 from the cashier. and did not supply water. He returned at about 9 p. m. and when he was asked about it he stated that he was not well The management asked him to stop the supply of water from the next day and to settle his account. On the next day he asked for compensation. Since there was no scheme the same was refused. Subsequently the management received a notice from the Labour Officer. The second party appeared before the said officer and agreed to permit the first party to resume work of supplying water. It sent a letter dated 12th April 1970 to the first party to report for duty as water carrier on Rs. 40 p. m. with free food on or before 20th April 1970. He did not report for duty. Hence the management was compelled to engage the services of some other person. The workman is not entitled to any relief and the reference is liable to be rejected.

4. On these pleadings my learned predecessor framed the following issues :—

1. Whether I party is not a "workman" as pleaded in para 2 of the rejoinder ?

2. Since the claim statement is not signed by I party workman is the reference liable to be rejected?

3. Whether I Party raised the dispute regarding reinstatement and whether the dispute is transformed into an Industrial Dispute?

4. Whether II Party is justified in terminating the services of I Party workman?

5. Whether I Party will not be entitled to reinstatement for the reasons stated in para 6 of the rejoinder?

6. To what relief, if any, is I Party workman is entitled to?

5. Sri P. R. Narayanaswamy had filed his vakalat to represent the second party on 29th March 1971. The case was being adjourned from time to time for one reason or the other. On 8th August 1972 Sri P. R Narayanaswamy sought permission of the Court to retire for want of instructions. Accordingly he was permitted to retire. He also submitted that he had intimated the date of hearing to the second party. The case was posted to 17th August 1972 and from there to 17th August 1972 and then on to 4th September 1972. On these dates the second party was absent and was unrepresented. No application was also filed for adjournment. In these circumstances the court had no option but to proceed under Rule 23 of the Industrial Disputes (Mysore Rules as if the second party had been present and/or had been duly represented.

6. On behalf of the first party the aggrieved workman is examined as W. W. 1 He has stated that he was working in the second party Coffee Bar as supplier and also bringing water from the well. He joined on 27th December 1968. He was asked to sign on voucher on 22nd February 1970 by the owner and he refused to do so. Then the proprietor became angry and asked him to go out. He then approached the Union. Ex. P. 1 is the letter written by the union. Conciliation proceedings were initiated. During conciliation the management assured him that he will be taken on duty. But no date was fixed. He had gone to his village. In his absence a letter was received as per Ex. P. 2. The management wrote another letter as per Ex. P. 3. The management had agreed to pay him Rs. 191-30 being the difference in wages. The same was not paid. He sent a reply as per Ex. P. 4. He is entitled to reinstatement with back wages.

7. The evidence of this witness has remained unchallenged. From the documents produced in this case it is seen that the second party was ready and willing to take back the worker to duty. But it is seen, according to I party workman the letter intimating him to report to duty on or before a particular day did not reach him as he was not in Bangalore. Ex- P. 3. shows that the workman went for duty on 23rd April 1970 instead on 20th April 1970 as directed by the management and therefore the management has refused to entertain him. This letter is dated 24th April 1972 written by the management. Regarding the termination of the workman has stated that on 21st February 1970 the workman took Rs. 2 and went away and returned only at 9 p.m., that when questioned he replied that he was not well and therefore the second party asked him to stop working for them from the next day and settle his accounts. If really the management considered the action of the worker as not proper they should have held an enquiry and should have verified whether the workman was really unwell as pleaded by him. But his sudden termination from service is arbitrary and is liable to be set aside. As noticed above the management is also not averse to take him back to duty in their Coffee Bar. I therefore hold that the workman should be reinstated in his former post.

8. With regard back wages it is seen that the workman has not reported to duty on or before the date set down by the second party. His case is that he was not in Station. But when he went back to duty about three days later the Second party has refused to take him to duty. Taking all these facts and circumstances into consideration I am of opinion that this is a fit case in which 25 per cent back wages should be awarded.

9. In the result I pass an award directing the second party to reinstate the workman Renuka in his former post with continuity of service and pay him back wages at 25 per cent from the date of termination to the date of reinstatement. No costs.

P. SRINIVASACHARYA,
Presiding Officer,
Labour Court, Bangalore.

ORDER

Bangalore dated the 3rd October 1972.

S. O. 54.—WHEREAS by State Government Order No. FCL 709 LLD 70, dated 3rd February 1971, the Industrial Dispute between the Workmen and the Management of Indian Coffee Bar, Bus Stand Circle, Yeshawntpur, Bangalore-22 was referred to the Labour Court, Bangalore for adjudcation.

AND WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said Award as above, in the *Mysore Gazette*.

[No. FCL 170 LLA 72.]

By Order and in the name of the Governor of Mysore,

ANIRUDHA DESAI,

Under Secretary to Government,

982 *Food, Civil Supplies and Labour Department.*